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UNITED STATES GOVERNMENT :

Memorandum

TO : Director
Federal Bureau of Investigation

DATE: 6 DEC 1979
DSD:MLW:SAW:lrs
DJ 144-11E-NEW

FROM : Drew S. Days, III
Assistant Attorney General
Civil Rights Division

SUBJECT: Paul Morris, Warden, Folsom State Prison,
Repressa, California, Hugo Pinell, et al.
Victim
Public Facilities
Summary Punishment
CRA of 1964

FEDERAL GOVERNMENT

This office has recently received correspondence about and from black inmates of Folsom Prison, Represa, California, alleging that they are subjected to discrimination based on their race by the prison administration. They also allege that prison officials permit the use of deadly force by guards and white prisoners against black prisoners. If supported by sufficient facts, these allegations may constitute a violation of Title III of the Civil Rights Act of 1964, 42 U.S.C. §2000b, Section 518(c) of the Crime Control Act of 1976, 42 U.S.C. §3766(c) (3), and 18 U.S.C. §§241 and 242. Further, litigation has been filed concerning this matter and alleging racial discrimination. Pinell, et al. v. Hickey, et al., No. S-79-641-LKK (E.D. Cal.). Consequently, intervention under Title IX of the Civil Rights Act of 1964, 42 U.S.C. §2000h-2 may also be appropriate.

In order that we may determine how to proceed in this matter, please conduct the following limited investigation:

Attached hereto is a letter from James F. Smith, Esq. in which several allegations are made. Please interview Warden Paul Morris and other appropriate prison officials and determine:

I. Weapons

A. The weapons normally issued to prison guards assigned to walls, towers, or other similar positions.

B. All training given to prison guards before such weapons are issued and any periodic retraining.

Please obtain copies of any written material used in said training or retraining.

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MAY 1978

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C. All guidelines, policies, instructions or standard operating procedures regarding the circumstances for the use of said weapons. Please obtain copies of any written policies or procedures. Please interview officer (b)(7)(C) to determine the nature of the training and instructions received by him regarding the use of weapons.

D. Please obtain copies of any reports filed by prison officials concerning each use of such of said weapons from June 1, 1979 to present.

II. Segregation Units

A. Please describe all segregation units at Folsom prison including what is referred to as building 4-A in the attached letter in terms of:

- 1). the purpose of said unit;
- 2). the number of cells, floors, etc. A not-to-scale sketch should be included;
- 3). the restrictions placed on inmates housed therein, as compared to the rest of the prison population;
- 4). the procedures for being placed in said unit;
- 5). the procedures for being released from said unit.

B. Please obtain copies of all records indicating inmates admitted to each said unit at Folsom during 1979 and note for each:

- 1). the reason for admission;
- 2). the date of admission;
- 3). the date of release, if any;
- 4). the race of the inmate.

C. The attached letter mentions three specific incidents involving black inmates in building 4-A, occurring on November 1, 1978; April 11, 1979; and May 18, 1979. Please obtain copies of prison records of all disciplinary charges (CDC 115 forms) placed against all inmates in connection with those three incidents and any internal investigations conducted by prison officials. Please note that the author of the enclosed letter, Mr. James F. Smith, has authorized the release of his letter to California prison officials if this will assist in locating the appropriate records.

D. Please determine the current housing arrangements in building 4-A, noting for each cell, the number of inmates currently held therein and the race of each. A diagram may be used to reflect this information.

E. Please determine the procedure for releasing inmates in groups from building 4-A.

F. Please determine whether there have been subsequent incidents between groups of inmates which have resulted in either injuries or the use of weapons by prison staff. If so, please obtain copies of all prison reports concerning said incidents.

III. Miscellaneous

A. Please determine the current population of Folsom Prison broken down by race.

B. Please determine whether any inmates of Folsom Prison have been charged with criminal violations of California law since January 1, 1979. For each such instance, identify:

- 1). the name and race of the inmate;
- 2). the criminal charge and date of indictment;
- 3). the case number and any disposition.

C. Please determine the number of uniformed staff (i.e., guards and supervisors) currently employed at Folsom Prison and determine further the number of blacks, and for each, the particular job and shift assignment. Please note any black correctional staff assigned to building 4-A.

D. Please determine the racial composition of the non-correctional (i.e., civilian) work staff at Folsom.

E. Please determine the composition of all committees that determine whether or not an inmate is to be assigned to building 4-A and whether or not an inmate is to be released from building 4-A. Please identify any black personnel assigned as members of said committees.

James F. Smith
SMITH, SNEDEKER & COMISKEY
Attorneys at Law
818 -26th Street
Sacramento, CA 95816
(916) 443-7649

August 30, 1979

Mr. Stephen Whinston
Special Litigation Section
Civil Rights Division
Department of Justice
10th and Pennsylvania, NW, Room 7338
Washington, D.C. 20530

Re: Civil Rights violations complaints by Hugo Pinell,
[REDACTED] State prisoners
at Folsom State Prison in California against Jiro
Enomoto, Director of Corrections, Warden Paul Morris,
Associate Wardens Joe Campoy and Huel Morphis and
Correctional Officer [REDACTED].

Dear Mr. Whinston:

Several weeks ago, my law partner Mike Snedeker wrote to Mr. Drew Day of your section (I believe that was your section) sending several documents and accounts of recent events at Folsom Prison which have led our clients and us to believe that there has been and is continuing a violation of the civil rights, under color of state law, of certain black prisoners there. I was recently advised by [REDACTED], staff person to Congressman Dellums, that no such package of material was received, or if received, was not available in your section.

It is with this background and with additional information concerning events that have transpired since then, that I again write to your Section this urgent message, seeking an investigation from the Department of Justice in order to arrest a continuing pattern of violation of civil rights in the Security Housing Unit (Segregated housing wing, Building 4-A) at the California State Prison at Folsom.

In the early 70's, there was a racial conflict within the California Department of Corrections which claimed, according to some observers, close to fifty lives. (See The Melancholy History of Soledad Prison by Min Yee.) The tragic warfare began on January 13, 1970 when three unarmed blacks were shot to death by gun tower guards in the exercise yard at Soledad Prison's O-wing. Today, at Folsom Prison, the same vicious scenario is repeating itself with almost identical ingredients. Many observers here have commented on these parallels. Soledad's O-wing, like Folsom's Building 4-A, is made up of secured units used by the Department of Corrections to segregate prisoners deemed by prison officials to be troublesome or threatening

173-11656-X
ENCLOSURE

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to the institutional security. There are numerous conditions within these units that have been alleged to constitute cruel and unusual punishment, and litigation on that very subject continues today.

The purpose of my letter, however, is to concentrate on one very particular and deadly condition of confinement that exists within the Security Housing Units (hereinafter referred to as S.H.U.'s), namely that of utilizing live ammunition (at Folsom in the form of M-14's (.223 caliber) to break up fist fights or other physical confrontations that often take place in the exercise yard. This practice, along with the resurgence of racial warfare within these units as well as within the California Department of Corrections, generally, have provided the environment for the current dangers to life and limb that my clients face. Recently, (b)(7)(C) were both shot by the same (b)(7)(C) officer and stabbed by other prisoners repeatedly during the same incident. Mr. Pinell has been the victim of two stabbing attacks by other prisoners, yet is repeatedly falsely depicted by this same officer as the aggressor, thereby "setting him up" as the next justifiable target. This officer remains in (b)(7)(C) post and the prison officials are continuing the same policies that have caused needless injury and death to black prisoners in the past.

This letter and exhibits will explain in some detail these incidents and policies. An immediate investigation by the Justice Department is requested.

November 1, 1978

On November 1, 1978, Hugo Pinell, a black prisoner at Folsom, was released to the first floor exercise yard of the S.H.U. from said unit at approximately 9:30 a.m. At that time he was dressed in shorts and had his clothes draped over his shoulders and arms. He was then immediately attacked by three white prisoners. Another black prisoner moved in to assist him and two more white prisoners joined in assisting the other three whites. During the fracas involving the two black prisoners, including Hugo Pinell, who were defending themselves against five white prisoners, Hugo Pinell knocked one of his attackers to the ground and struck him several times with his fist. No weapons were utilized by either side. (See Exhibit "A" Report by Correctional Officer "C/O" (b)(7)(C) . (b)(7)(C) issued a CDC Form 115, (Rules Violation Report) charging Pinell with "involving himself in a fist fight" but failed to make any mention whatsoever that plaintiff Pinell was defending himself against an attack in which he was badly outnumbered (Exhibit "B"). As a result of this characterization, Mr. Pinell was assessed the maximum of 18

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months' additional time in administrative segregation from the general population of Folsom Prison (Exhibit "C"). The incident of November 1, 1978 followed a general racial confrontation on the first floor exercise yard that took place on October 31, 1978. Placing two black prisoners on the yard at the same time as five white prisoners endangered the former, as they were outnumbered. This release to the yard took place on November 1, 1978, in an atmosphere of extreme antagonism between these two groups because of the events of the previous day which resulted in injuries to 26 different prisoners. Associate Warden of Administration, Huel Morphis (Appeals Officer); Paul Morris, Warden; and Director Enomoto all approved of the issuance of the disciplinary report and a finding of guilty against Hugo Pinell and the punishment of ten days confinement to quarters and 18 months additional administrative segregation time.

Messrs. Morphis, Morris and Enomoto ruled as part of the administrative review of the November 1, 1978 incident that Mr. Pinell should suffer administrative sanction for said incident because the white prisoner he had struck suffered fractures to his left frontal jaw and mandible, and further, because Mr. Pinell declined to appear at the disciplinary hearing or at the classification committee's review of his case. In his appeal to Director Enomoto, Mr. Pinell stated that he did not attend the committee review because, in his 14 years in the Department, he had always been found guilty of even the most minimal of charges, no matter what proof was presented (Exhibits "D" and "E").

April 11, 1979

On or about March 31, 1979, information was obtained by Folsom S.H.U. staff that there was to be a racial confrontation. The correctional staff conducted a search of the area and confiscated 24 metal and plastic stabbing instruments. A letter was also confiscated by the authorities that specified that five named white prisoners were to attack the black prisoners and why. The planned attack was to be in retaliation for attacks the blacks had allegedly perpetrated on the whites. It was noted at that time that all of the white inmates listed belonged to a prison white racist group similar to the Klu Klux Klan. Again, on April 11, 1979 as on November 1, 1978, just as Hugo Pinell was processed into the first floor exercise yard, he was attacked by two white prisoners (Exhibit "F"). Simultaneously, as if by prearranged plan, at least 13 white prisoners on the yard attacked 7 black prisoners (Exhibit "G"). Two black prisoners, including Mr. (b)(7)(C) were bleeding from wounds on their stomach and back areas. Another black prisoner sustained fifteen puncture wounds to his back which were administered by one white prisoner, while two other white prisoners held him down. It was observed by the staff that the white prisoners were in control of the weapons and other stabbing instruments which were utilized during the incident. Several

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correctional officers submitted written reports that they observed two white prisoners initiate the incident by assaulting Mr. Pinell and that these white prisoners attempted to stab Mr. Pinell so that his only recourse was to escape their murderous assault by running from them, which he did. Nonetheless, Mr. Pinell was issued a disciplinary violation report by (b)(7)(C)

(Exhibit "H") who characterized Pinell as having participated in a physical altercation with the two prisoners. There was no mention in said rules violation report that Pinell was the victim of an assault by weapons. (b)(7)(C) nonetheless stated in another report that "Two other inmates attempting to stab the black inmates were frustrated, as the blacks managed to get away (that is, Pinell and...[another black inmate])." (Exhibit "G")

May 18, 1979

During the period between April 12 and May 17, 1979, several violent encounters transpired between the white and black prisoners of Folsom's S.H.U. On or about May 14, 1979, both the black and white prisoners on the first tier of the S.H.U. signed a statement that if released to the exercise yard,* there would be no fighting between them. On the basis of their petition, the staff did determine to release the first floor prisoners to the first floor exercise yard on the morning of May 18, 1979. However, because the staff anticipated trouble, the prisoners were subjected to a thorough search of their clothing and bodies (including body cavities) before being released to the yard. Also, a metal detector was used on each of them. After being released to the yard for some two hours, the black prisoners (11) and white prisoners (16) faced each other in joint skirmish lines after the black prisoners walked to the eastern portion of said exercise yard (toward the whites). In the racial fight that followed, which was commenced by both groups attacking each other, Mr. Pinell was knocked to the ground by one white prisoner, and then was repeatedly stabbed about the upper right eye by another prisoner. (b)(7)(C) also were both stabbed, receiving puncture wounds to their vital organs. It appears that they received their wounds from an instrument capable of a deep incision. How these weapons passed the searching before the prisoners' release into the yard, is unknown. In all, seven black prisoners were injured severely by stabbing wounds. One white prisoner received a knife wound on his hand. Officers, as well as prisoners who were eye witnesses to this encounter, saw white prisoners making stabbing motions against black prisoners (Exhibits "I" and "J"). After the yard was cleared, three prison-made weapons were discovered--an exacto knife blade embedded in a plastic toothbrush handle was retrieved in the area where the whites grouped both before and after the encounter (Exhibits F, J, K, L and M).

Officer (b)(7)(C) again in (b)(7)(C) fired five rounds of 12-gauge non-lethal "stinger" ammunition for

* Although the first floor exercise yard was closed during this period.

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effect to stop the fighting. The fighting was not stopped. He then fired two rounds from a mini-14 (223. caliber), but this was also ignored. He then shot (b)(7)(C) stating later that (b)(7)(C) was making stabbing motions and had been ordered by (b)(7)(C) to stop.

(b)(7)(C)

(b)(7)(C) were both stabbed by white prisoners and (b)(7)(C).
(b)(7)(C) No white prisoners were shot (Exhibit "N").

On May 18, 1979, C/O (b)(7)(C) issued yet another rules violation report (CDC 115)* against Hugo Pinell stating that after the racial skirmish line previously described was formed, that he observed Pinell with an unidentifiable object in his hand and saw three whites wrestle the object away from him and start stabbing him with it. (b)(7)(C) went on to state that Mr. Hugo Pinell's deliberate action of assuming a leadership role and his failure to heed (b)(7)(C) verbal orders and warning shots was a major contributing factor in several inmates being seriously injured and inciting others to use force and violence (Exhibit "O"). From my limited investigation, it appears that (b)(7)(C) is the only person who has reported that any of the blacks were armed with weapons on May 18, 1979. (See Exhibits I, J, and M). No one else has reported that Mr. Pinell was seen with a weapon. The single white who received a hand wound was not seen near Mr. Pinell.

As a result of this report, Mr. Pinell received a term of an additional 24 months* in the S.H.U. and additional documentation in his file that it was he who wielded the deadly weapon (Exhibit "P"). In the administrative hearing held at Folsom Prison on this incident, Hugo Pinell was told by Associate Warden Joe Campoy that his denial that he had any weapon in his hand on the day in question was contradicted by (b)(7)(C), and in a case like this where an officer's word differed from a prisoner's word, the officer's word would always be taken. (b)(7)(C) had received verbal written communication from Warden Paul Morris, Campoy and Eastman for doing a fine job under trying circumstances immediately after the shooting and stabbing incidents of May 18, 1979. Mr. Pinell's subsequent administrative appeal of the disciplinary rules violation decision was denied at Folsom on the basis that Mr. Pinell was "on the receiving end of some type of stabbing instrument," that (b)(7)(C) (b)(7)(C) "still feels...[that Pinell]...had something in his hands." (Similarly, (b)(7)(C) received a Rules Violation Report for making stabbing motions and likewise an additional lengthy term of segregation confinement for this incident in which he was stabbed as well as shot.)

(b)(7)(C) On or after the injuries to Messrs. Pinell, (b)(7)(C) and (b)(7)(C) at approximately 11:25 a.m. on the morning of May 18, 1979, Mr. Pinell and (b)(7)(C) were transferred to the hospital area

*At this writing I do not have complete documentation of the disciplinary actions taken against (b)(7)(C) but am informed that they have received additional administrative sanctions.

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of Folsom Prison. They remained there without more than superficial treatment for approximately three hours before being transferred by motor vehicle ambulance to San Quentin Prison. They did not receive medical treatment at San Quentin until on or about 7 p.m.--some seven and one-half hours (7 1/2) after their injuries.

On May 24, 1979, as the attorney for Mr. Pinell, I wrote to Warden Paul Morris at Folsom Prison requesting, on the basis of the incidents and reports of November 1, 1978, April 11, 1979 and May 18, 1979 (as well as another fabricated write-up incident) that (b)(7)(C) be removed from (b)(7)(C) until such time as a more thorough investigation into his truthfulness and objectivity could be completed (Exhibit "Q"). This appeal was denied (Exhibit "R"), and was re-filed with Department of Corrections Director Jiro Enomoto on July 16, 1979 (Exhibit "S"). Since that time, Director Enomoto sent a representative to inquire of Mr. Pinell whether he would be willing to submit to a polygraph examination concerning his version of the events of May 18, 1979. Mr. Pinell promptly replied that he would, but there has been absolutely no answer to the administrative appeal by Director Enomoto. (b)(7)(C)
(b)(7)(C)

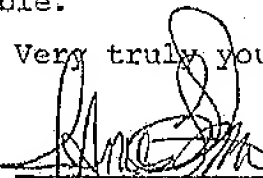
On or about August 15, 1979, (b)(7)(C) issued another false rules violation report against Mr. Pinell. This time, he stated that (b)(7)(C), he overheard Pinell talking inside of the unit actually advocating violence both against the unit inmates and unit staff. (b)(7)(C) stated in this report that he overheard Pinell refer to a white inmate (this was later amended to state "unidentified" inmate) who he had just finished cursing, stating to another inmate that there was no need to be quiet, that it was no secret, that they knew that he would "get them." (b)(7)(C) also stated that Mr. Pinell referred to (b)(7)(C) as having furnished the white inmates with weapons. Mr. Pinell states that this report is a total fabrication.

Recently, it appears likely that the first floor exercise yard will be opened again (it has been closed since May 18, 1979). The blacks are outnumbered by the whites by a 3:1 ratio on that floor. (b)(7)(C) continues in a critical (b)(7)(C).

This is precisely the kind of case where federal inquiry is needed to protect the lives and constitutional rights of those too powerless to do so themselves.

Please acknowledge receipt of this letter and advise of your intentions as soon as possible.

Very truly yours,



James F. Smith, Attorney for
James Gauden, Larry Hustice, Hugo
Pinell

JFS:pl

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cc: James Gaulden
Larry Justice
Hugo Pinell

Congressman Ron Dellums
2490 Channing Way, Room 202
Berkeley, CA 94704
Attn: Jo Ann Lee

Assemblyman Willie Brown
State Capitol
Sacramento, CA 95814

Mario Obledo
Secretary of Health & Welfare
10th & L Streets
Sacramento, CA 95814

Herman Sillas
U.S. Attorney
Federal Courthouse
650 Capitol Mall
Sacramento, CA 95814

(b)(7)(C)

San Francisco, CA

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Withheld pursuant to exemption

(b)(7)(C)

of the Freedom of Information and Privacy Act

NO. A-38401 NAME PEREZ

CDC-128-G (Rev. 2/69)

Custody:

Assignment:

Comments: MAXIMUM AR(SCREENED VISITS 12/70)

SHU, PRIOR MAXIMUM 2/4/82, 11/1/78
TERM 18 MOS. CS MAXIMUM 2/4/82,
MERD: 5/12/81

S was offered personal appearance before this committee to discuss a disciplinary of 11/1/78 involving a racial fight and assault with injury to inmate BERT, B-36092. S refused to make an appearance. Due to the extremely serious injuries to the victim and the fact that this resulted in a general racial disturbance on the 1st floor exercise yard wherein shots were fired to quell the incident and inmates were injured, we are assessing the maximum of 18 months determinate term CS with the SHU term S is already serving.

(b)(7)(C)

CCI - Inmate

Date: 11/9/78

Classification

ICC

Inst.: FOLSON

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Withheld pursuant to exemption

(b)(7)(C)

of the Freedom of Information and Privacy Act

Memorandum

Date : December 4, 1978

To : PINELL, Hugo A.
A-88401

From : Folsom State Prison, Reprasa 95671

Appeal Re:
Subject: Folsom Log #2705

You state that after the general racial disturbance in both SHU exercise yards two days earlier, you were involved in a fight on the yard. You claim you did not start anything and did not attack anyone. (b)(7)(C) is either mistaken or is lying and you wish the CDC 115 to be dismissed.

INTERVIEWS - I came to SHU twice to interview you and was unable to do so. On 11-9-78, you were out in the yard and on 12-1-78, you had a visit.

(b)(7)(C) states that you threw down your clothes and bound your hands in a handkerchief as soon as you cleared the gate in preparation for a fight, but the whites were already advancing toward you.

(b)(7)(C) feels that you were cut off and had no choice but to enter into the fight.

(b)(7)(C) states that the eighteen months addition to your MERD was based on the serious injuries sustained by (b)(7)(C), as clearly stated in the CDC 128-G of 11-9-78. Even though the wording appeared to blame you for the general disturbance that followed, such intent was not meant. They did not use this to enhance your time.

INVESTIGATION - The CDC 115 of 11-1-78, states that you involved yourself in a fist fight with (b)(7)(C) and a general racial disturbance resulted in the first floor SHU exercise yard. (b)(7)(C) walked toward you as you came onto the yard and you advanced toward him. You both started swinging when you came together. You knocked (b)(7)(C) down and continued to strike him while he was lying. He appeared to have a severe head injury. (b)(7)(C)

(b)(7)(C)

The 128-G of 11-9-78, was as a result of the CDC 115 and a new MERD was established for you by ICC. They assessed you eighteen months sentence for the infraction due to the serious injuries sustained by Herth. The CDC 629-B form was filled out on the same day as

PINELL, Hugo A.
A-88401
Folsom Log #2705

-2-

September 4, 1978

INVESTIGATION - Continued - 128-G and it has your time figured at eighteen months CS, with a 2-4-82 MERD.

I checked the Classification Manual and the base range guide, Section 2-C, states that physical assault on an inmate which results in serious physical injury to the victim, can be assessed from six to eighteen months.

DECISION - Even though you did not deliberately precipitate the incident, you clearly took part in it intentionally and prepared yourself for the conflict. You caused severe injury to (b)(7)(C) during the incident and this is only the latest of the succession of physical assaults by you. You had the option to go to ICC hearing and plea your case and you turned down the chance. You apparently were not very concerned what they did. Your appeal is denied.

H. D. Morris
H. D. MORRIS
Associate Warden
Administration

HDM:ef

I concur with this action:

P. J. Morris
P. J. MORRIS, Warden

cc: c. file; appeals file
(b)(7)(C), SHU

DEPARTMENT OF CORRECTIONS

SACRAMENTO



February 2, 1979

Mr. Hugo Pinell
A-88401
Folsom State Prison
Represa, California

Dear Mr. Pinell:

Re: Appeal No. 121515
Folsom Log No. 2705

This is in response to your request for review of the disciplinary disposition wherein you were held responsible for fighting with inmate (b)(7)(C) in the Security Housing Unit exercise yard. As a result, you were assessed 10 days confinement to quarters and referred to the main classification committee for appropriate housing and program planning.

In your appeal, you contend that:

1. You were the victim of an assault;
2. You did not receive a copy of the report written by (b)(7)(C) (b)(7)(C) who was in the area when the incident occurred; and
3. Institution staff failed to interview you prior to denying your appeal.

This matter has been investigated and I have concluded that there is no validity to your appeal. My decision is based on the following factors:

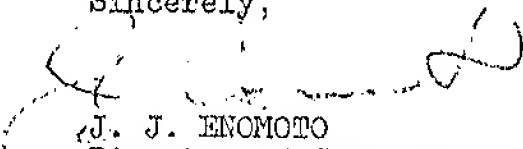
1. (b)(7)(C) the author of the disciplinary report, indicated he observed you exit the sallyport gate and advance toward inmate (b)(7)(C). A fight ensued and several rounds were fired in order to break up the disturbance;
2. The manner in which you were dressed clearly indicates you had prepared yourself for a fight;
3. Inmate (b)(7) was seriously injured in the fight. It appears your involvement exceeded the point at which you were merely defending yourself;
4. There is no evidence to support your contention that you did not receive a copy of all the reports relating to your disciplinary report; and

Mr. Hugo Pinell A-88401
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5. You refused to appear at the disciplinary hearing and at the classification committee's review of your case. This leads me to conclude you were not seriously interested in bringing out the pertinent facts surrounding the incident.

Although you were not interviewed by institution staff, I feel the interview conducted by the departmental investigator was sufficient in investigating this matter. Your appeal is, therefore, denied.

Sincerely,


J. J. ENOMOTO
Director of Corrections

cc: Warden Morris, Folsom
Appeals Associate Morphis, Folsom

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of the Freedom of Information and Privacy Act

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CALIFORNIA STATE PRISON AT FOLSOM

Represa, CA 95671

FACT SHEET # 4

TO: ALL STAFF AND INMATES

DATE: MAY 22, 1979

Post Board and Screening classification has been cancelled for this week, but Initial, Re-Class and ICC meetings are still scheduled.

The inmate who had been sent to CMF, Vacaville, for medical treatment was returned to Folsom today. His injuries resulted from the Friday incident in SHU and the reason for his removal to CMF was because of a punctured lung due to a stab wound. According to the doctors at CMF, the wound on his wrist may have been caused by

(b)(7)(C)

#5 Building will be searched tomorrow, Wednesday, 5-23-79. Work and program areas such as Library, Education, Laundry and Lower Yard have already been searched or in the process.

Today was quiet and uneventful and your continued patience under trying circumstances is greatly appreciated.

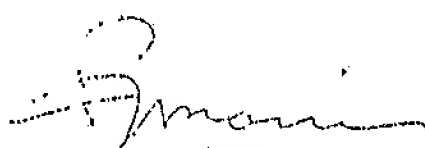

P. J. MORRIS
WARDEN

EXHIBIT "L"

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Withheld pursuant to exemption

(b)(7)(C)

of the Freedom of Information and Privacy Act

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NAME PINELL

CDC-128-G (Rev. 2/69)

Custody:

MAXIMUM AR

Assignment:

SHU, PRIOR MAX. 2/4/82, 5/18/79,
TERM 24 MOS., EXPIRATION 2/4/84,
MERD: 11/30/82

case reviewed in absentia when he refused to appear subsequent to his being found guilty CDC 115 of 5/18/79 for inciting others by deliberate action to use force and violence on other person, weapon involved. Committee notes that this disciplinary involved both the suit upon another inmate with weapon and inciting a disturbance. Due to serious nature the incident, committee feels that S represents a serious threat to the security of the institution and the safety of others and acts to assess a determinate term of 24 months CS.

F. LONG, Act. CC III/cim
Coombs, Price, Specht

Inmate

Date: 6/30/79

Classification

ICC

Inst.: FOLSOM

James F. Smith
SMITH, SNEDEKER & COMISKY
818 -26th Street
Sacramento, CA 95816
(916) 443-7649

May 24, 1979

Warden Paul Morris
California State Prison at Folsom
Represa, CA 95671

Re: Administrative Appeal on behalf of Hugo Pinell, A-88401

Dear Warden Morris:

The purpose of this letter is to file an administrative appeal with you on behalf of my client, Mr. Hugo Pinell. His authorization for me to file such appeal on his behalf is attached. The purpose of this appeal is to request removal or reassignment of (b)(7)(C) from the (b)(7)(C) in the Security Housing Unit and an investigation of the events there on May 18, 1979.

Because this appeal raises the issue of an institutional policy or personnel matter, I am asking you to handle this appeal directly and to by-pass the first level of review, as authorized by California Department of Corrections Administrative Manual Section 7303, subdivision (d). Further, because this appeal, as more fully described below, presents an issue of grave importance which should be resolved immediately.

On May 18, 1979, a very serious altercation occurred in the exercise yard of the Security Housing Unit. It appears that a racial confrontation occurred involving 16 whites and 11 blacks. It further appears that as a result of that confrontation, numerous blacks were wounded, including Mr. Pinell who suffered serious lacerations by a razor-like instrument around his eyes, and (b)(7)(C) who was shot. More specifically, Mr. Pinell received a 115 for his alleged display of the very weapon that he was wounded with, and "leadership role" and "failure to heed (b)(7)(C) verbal orders and warning shots." (See 115 attached.) (b)(7)(C) concludes on his report that such action or inaction on Pinell's part was a "major contributing factor in several inmates being seriously injured, and inciting others to use force and violence." After reviewing this write-up and talking to Mr. Pinell at length on May 23rd, it appears that Officer Hickey has demonstrated that he lacks objectivity or that he is prone to fabricate false charges. If this is so, he should not be a person armed with a deadly weapon in charge of overseeing the (b)(7)(C). This appeal and request for an investigation is based on the following:

Warden Paul Morris
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1. Mr. Pinell did not in fact have a weapon in the SHU exercise yard on May 18th. In this regard, I would request an objective investigation including interviews of all percipient witnesses.

2. Assuming Mr. Pinell did have a weapon as (b)(7)(C) alleges, then the act of three white inmates wrestling the object from Pinell and then starting to stab him with it, certainly transformed the situation rapidly into one in which the whites were the aggressors using deadly force. This write-up gives no indication that they were held responsible for what followed or that gunfire was directed at them. Secondly, Mr. Pinell was stabbed with a very sharp razor-like instrument. (If indeed he held such an instrument and it was wrestled from him by three persons, it would appear highly likely that one of the allegedly four combatants over this razor-like instrument would have received some hand wounds. Were there any such wounds?)

3. Without question, Mr. Pinell was stabbed and severely injured about the face by this razor-like instrument by several white prisoners. Yet, it was not the whites who were inflicting deadly force with the stabbing instrument who were shot by (b)(7)(C), but rather, Larry Justice, who (b)(7)(C) claims was also utilizing a stabbing instrument. Again, I believe an objective investigation would reveal that Mr. Justice was not armed with a weapon.

These matters in and of themselves are serious enough. However, there are other incidents which indicate Officer Hickey's lack of objectivity.

Several days before this incident of May 18th a black prisoner

(b)(7)(C)

Again, on April 11, 1979 and November 1st, 1978 Mr. Pinell was the victim of an attack by white prisoners. On November 1, three prisoners attacked him. He defended himself and in the process inflicted injuries with his fist on one prisoner. He received the 115. (b)(7)(C) reported that Pinell as well as the man he subsequently injured, (b)(7)(C), simultaneously came together and started swinging. Another eye witness officer who

Warden Paul Morris
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was also immediately upon the scene, (b)(7)(C) reported that Pinell was attacked by three prisoners. On April 11, 1979, the white prisoners attacking Pinell wielded weapons and Pinell's only action was that of getting out of the way of the attack. Yet again, (b)(7)(C) felt called upon to characterize the confrontation in such a fashion so that Pinell likewise received a 115. It is also important to note that officials in the SHU had notice of the April 11, 1979 planned attack against black prisoners as early as March 31, 1979. At that time, searches of specified areas revealed 24 metal and plastic stabbing instruments. The persons who were known to be planning this attack subsequently executed it. (SHU Memo of March 31, 1979)

The aforesaid circumstances raise very serious issues. Certainly, it is of critical importance that the officers assigned to the SHU in a time of great tension and violence be committed to reporting the truth. In these life and death encounters characterizing the victim of an assault as the aggressor can not only lead to unjustified felony indictments, but can be utilized to justify shooting that prisoner. It appears that within the 115's that have been lodged against Pinell as aggressor when in fact he has been the victim of aggression could well be utilized to justify shooting him simply because of his background. If that seems unduly paranoid, I would remind you of the incident of January 13, 1970 in the O-Wing exercise yard where three black prisoners were shot to death in what a jury later found to be reckless, if not intentional action on the part of (b)(7)(C)

Based upon the foregoing, I would request the immediate and temporary relief of removing Officer (b)(7)(C) from the (b)(7)(C) and an objective investigation as to his ability to faithfully and truthfully report what he observes, and to act in accordance with institutional policies as to the utilization of deadly force with complete objectivity whatever racial factions or persons may be involved. Admittedly, this is a high standard of professional conduct. However, when deadly force is being utilized, the person authorized to use it should be expected to meet that standard.

Your immediate attention to this matter would be appreciated.

Sincerely,

James F. Smith

JFS:pl
cc: Hugo Pinell

State of California
Memorandum

Human Relations Agency—Department of Corrections

To: PINELL, Hugo
A-88401

Date: June 14, 1979

File No.:

Subject: Folsom Appeal 79/373

From: Folsom State Prison, Represa 95671

On 5-24-79, by means of a three page letter, Attorney James Smith filed an appeal in your behalf. The appeal was to request removal or reassignment of (b)(7)(C) in SHU and to make an investigation of events on 5-18-79. On that date, an altercation occurred in SHU exercise yard and as a result, you were wounded. You received a CDC 115 for alleged display of a weapon you were wounded with, for your leadership role, and for favor to heed verbal orders and warning shots. It is claimed that (b)(7)(C) lacks objectivity or is prone to fabricate false charges. Points are made that (1) You did not have a weapon in the yard; (2) Assuming you did have a weapon and it was wrestled from you, did the White inmates suffer hand wounds in getting it. There is no indication that White inmates were charged with aggression or that gun fire was directed at them; (3) Instead of Whites being fired upon during their stabbing of you, another Black inmate was shot. Officer (b)(7)(C) objectivity is challenged by citing other incidences when you were attacked, yet you were given write-ups.

INTERVIEWS: During our interview, you stated that (b)(7)(C) was lying and is prejudice toward all prisoners and is a cold racist and is constantly harrassing Blacks. He did not see you assault anyone and did not see you with a weapon. (b)(7)(C) is just fabricating the story. He shot (b)(7)(C) and (b)(7)(C) then lied to cover up.

(b)(7)(C) states that an inmate in the Committee Hearing stated that two Black inmates had their hands wrapped and at least two had weapons. The whole incident only lasted about thirty seconds and there were too many areas to respond to and trying to curb everyone who is being aggressive. Anyone involved in an altercation is given disciplinaries and Whites in this instance were all issued 115's. White inmates were being fired at because one of them stated that he had been hit in the neck by shotgun rounds.

INVESTIGATION: CDC 115 of 5-18-79, states that you were observed in a physical altercation with three White inmates. Prior to the altercation, you had led a group of eleven (11) Black inmates to opposite end of the yard near the Whites and formed a line facing them. During discussion that ensued, you had an unidentifiable object in your hand. The three Whites wrestled the object from your hand

INELL, Hugo
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June 14, 1979

and started stabbing you with it. Your deliberate actions were a major contributing factor in several inmates being seriously hurt. You failed to heed verbal warnings and warning shots. During the disciplinary hearing, you admitted being involved and felt you were more or less responsible for the incident. You had your hand wrapped to lessen injury to a swollen hand if there was a fight. You knew there would be a fight. Inmate witnesses were denied due to security in the unit, but staff witnesses were present. Investigation report states that you denied having or seeing a weapon and that (b)(7)(C) was deliberately lying. Three White inmates were interviewed at your request and two of them stated there was no knife.

Immediately after the incident (b)(7)(C) received verbal commendations from the Warden, AWC, P.A., and Lt., followed by a written commendation by the Warden regarding his fine efforts in quelling the disturbance.

DECISION: Your appeal is denied. You admitted being involved in the fight. The weapon was not found on you or the White inmates, but you certainly were on the receiving end of some type of stabbing instrument. The Officer in the (b)(7)(C) still feels you had something in your hand and that you precipitated the incident. (b)(7)(C) received verbal and written commendations from staff for doing a fine job under trying circumstances; therefore, it goes without saying that he will not be removed from his position because of your request and charges. Your attorney filed this appeal, but my response is to you. You can inform him of the outcome.

H. Morphis
H. MORPHIS
Associate Warden-Administration

I concur with this action:

P. J. Morris
P. J. MORRIS, Warden

HM:ef
cc: C-File; Appeals File

June 27, 1979

Discussed with Mr. Snedeker, Attorney
with Mr. Smith, for Pinell.

P. J. Morris
P. J. Morris

Smith, Snedeker and Comiskey
Attorneys at Law

James F. Smith
Michael R. Snedeker
Paul W. Comiskey

REPLY TO:
SACRAMENTO OFFICE ☐
818 26th St.
Sacramento, California 95816
(916) 443-7649
SAN FRANCISCO OFFICE ☒
1317 18th St.
San Francisco, Ca 94107
(415) 824-7080

July 16, 1979

Jiro Enomoto
Director,
California Department of Corrections
714 P Street
Sacramento, Ca. 95814

Re: Administrative Appeal on Behalf of Hugo Pinell, A-88401

Dear Mr. Enomoto:

The purpose of this letter is to file an administrative appeal with you on behalf of Hugo Pinell. Mr. Pinell is represented by my partner James Smith, who is currently out of the country-- in the interests of a quick resolution to a serious problem, I am preparing this appeal and sending it directly to you.

Attached hereto and incorporated as part of this appeal are the administrative appeal submitted to Folsom officials, and the written response of Messrs. Morphis and Morris. I met with Warden Morris and Associate Warden Campoy on June 27 to discuss this incident. What follows is in response to the written answer to Mr. Pinell's appeal to Warden Morris.

I. MR. PINELL.

According to Warden Morris, weapons used in the incident of May 18 were the kind capable of "keester stashes"; parts of razors or X-acto blades embedded in small plastic handles capable of being concealed in one's rectum. Prior to being admitted to the exercise yard on that day, Mr. Pinell was quite thoroughly searched. The search included a visual survey of his entire body and of his rectum, and having him squat down and cough three times, for the purpose of removing or dislocating any foreign materials inserted in his rectum. No weapons were found. There is no evidence that Mr. Pinell stabbed or cut anyone. Two opponents of Mr. Pinell's were interviewed by staff and "stated there was no knife." (Appeal Decision of June 14 and 27, page 2.)

7/16/79

The only evidence that Mr. Pinell had a weapon was provided by (b)(7)(C), who "still feels you (b)(7) had something in your hand." Id., page 2. According to Warden Morris, the (b)(7)(C) (b)(7)(C) (b)(7)(C) (b)(7)(C)

Mr. Pinell's face was being deeply slashed.

Mr. Pinell's CDC 115 received for this incident (written by (b)(7)(C)) states that three inmates wrestled an object from his hand and began stabbing him with it. As you are aware, Mr. Pinell is no novice to such fights. On November 1 of last year, he was attacked by three white inmates, and inflicted injuries on one with his fists. It strains credulity to believe that in a matter of a very few seconds he could be stripped of a weapon. His appeal requested that the white inmates who allegedly took from him this sharp, razor-like instrument be checked to see if they received any hand wounds. There was no indication in Mr. Morris's answer that any such hand wounds were received.

In sum:

1. The alleged weapon had a blade approximately one inch long;

(b)(7)(C)

3. There is no evidence of Mr. Pinell's having used a weapon on anyone;

4. Two of Mr. Pinell's opponents say he had no knife;

5. Mr. Pinell was thoroughly searched by staff prior to going on the exercise yard, with special attention paid to the possibility of a "keester stash";

6. Mr. Pinell himself received serious facial injuries;

7. It is not likely that Mr. Pinell could have been so quickly relieved of a small, sharp-bladed weapon; and

8. There is no evidence that those who supposedly did so received any cuts.

A preponderance of all the evidence indicates that, although Mr. Pinell (along with all others released on the yard) apparently

7/16/79

knew and expected that there would be a fight, he was not armed with a weapon.

ii. (b)(7)(C)

Points raised in the appeal filed on Mr. Pinell's behalf about previous examples of (b)(7)(C) lack of objectivity were not spoken to in the answer. As far as the incident of May 18 is concerned, a bare narrative of what happened according to our information and information supplied by institutional staff paints a vivid picture:

1. In a fight between 16 whites and 11 blacks, 7 blacks were hurt by cuts, some seriously (collapsed lung, deep facial lacerations);

2. Two or three persons were shot, all black; the person most severely penalized, to our knowledge, was Mr. Pinell, who was also one of the most seriously hurt;

3. The most distressing part of the institutional answer to Mr. Pinell's appeal is the following language:

Immediately after the incident, (b)(7)(C) received verbal commendations from the Warden, AWC, P.A., and L.T. . . . (emphasis added)

This indicates to us that before any investigation was undertaken, the views of Folsom officials were locked into support of (b)(7)(C). The practice of immediately commending someone who has just shot other human beings with potentially lethal ammunition is not a healthy one. It places loyalty too high over truth, and feeds disdain and distrust. In conclusion, I refer you to the final paragraph of the appeal filed by Mr. Smith. Your immediate attention to this matter would be appreciated.

Sincerely,



Michael R. Snedeker

cc: Hugo Pinell

Encs.

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Withheld pursuant to exemption

(b)(7)(C)

of the Freedom of Information and Privacy Act

Memorandum

TO : Federal Bureau of Investigation

DATE: AUG 25 1980

FROM : ~~DSD~~ Drew S. Days III
Assistant Attorney General
SUBJECT: Civil Rights Division~~FEDERAL GOVERNMENT~~DSD:LW:PSL:SAW:lrs
DJ 144-11E-296EXP
mg
Paul Morris, Warden, Folsom State Prison
Reprea, California
Hugo Pinell, et al. - Victims
Public Facilities
CIVIL RIGHTS ACT OF 1964

Reference is made to your memorandum of May 22, 1980 enclosing the report of Special Agent [redacted] of your Sacramento field office (file no. 173-65). Attached for your further reference are three copies of a letter sent this date to Governor Edmund G. Brown, Jr. pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. Section 1997b, notifying State officials of our intent to commence this investigation. Please do not commence your investigation until fourteen (14) days from the date hereof.

b6 Per
b7C FBI

In order that we may determine whether further proceedings under the Civil Rights of Institutionalized Persons Act are appropriate, please conduct the following limited investigation.

I. Protection from Harm

A. Please identify all locations at Folsom prison where armed officers are stationed noting:

- 1) location of the post (gun walks and towers);
- 2) areas inside the prison supervised by each;
- 3) job description and post orders for each post.

B. Please obtain copies of all written training material given to officers who may be assigned to armed posts.

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C. Please interview the Warden and/or other appropriate officials and determine how long armed officers have been stationed on "inside" posts (i.e., towers with inside the walls

b6 Per
b7C FBI

ENCLOSURE 2 det.



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supervision and gun walks); and any particular history or facts which led to the placement of armed officers in such locations.

D. Please interview the warden and/or other appropriate personnel regarding the use and subsequent removal of "stinger" ammunition from the armed posts. Please determine when "stinger" ammunition was first introduced at Folsom, the reasons therefor, and, in detail the reasons and facts supporting the removal of "stinger ammunition." Please determine what role any officer or group of officers, or union had in the decision to remove "stinger" ammunition from the armed positions. Please interview Building 4-A personnel Eastman and Wham concerning this matter.

E. Please interview the Warden and/or other appropriate personnel regarding the number of inmate on inmate assaults at Folsom. Please obtain copies of all reports relating to all such assaults from January 1, 1980 to present, and obtain the Warden's opinion regarding the reasons for such assaults, the trend in the frequency of such assaults, and whether there are sufficient officers at Folsom to guard against such assaults. Please obtain a copy of the Warden's most recent staffing request to the Department of Corrections.

If there is a guard union or unions at Folsom, please interview the head of such union or unions regarding this matter.

F. Please obtain all medical records including autopsy reports pertaining to the death of inmate Jessie Lee Harge on May 19, 1979.

G. To update material collected in the previous investigation, please obtain copies of all reports relating to the use of weapons by prison guards from March 1, 1980 to present.

II. Racial Discrimination

Information supplied to this office indicates that white prisoners on the first floor of the Security Housing Unit attempt to harass and intimidate black inmates by the following: name calling, racial slurs, throwing water, garbage, and other assorted objects in the cells of black inmates. It is further alleged that prison officials consistently house fewer blacks than whites on this unit and that they have been unsuccessful in halting the treatment of black inmates described above. Please interview three (3) black prisoners, and three (3) white prisoners and three (3) Mexican-American prisoners confined on the first floor of the Security Housing Unit concerning these matters.

In addition, please interview the Program Administrator and the correctional officer in charge of this unit concerning the matters referred to in the previous paragraph. Your inquiry should also include an assessment by the prison officials of the racial tension in the Unit and the actions they have taken to respond to the allegations contained in the previous paragraph.



U.S. Department of Justice

Civil Rights Division

Just

on

Office of the Assistant Attorney General

Washington, D.C. 20530

Honorable Edmund G. Brown, Jr.
Governor of California
State House
Sacramento, California 95814

Re: Folsom State Prison

Dear Governor Brown:

Late last year we received allegations that inmates at Folsom State Prison, Represa, California, were being subjected to racial discrimination and violations of the Federal criminal civil rights laws, 18 U.S.C. Section 241 and 242.

On December 13, 1979, Deputy Assistant Attorney General John E. Huerta wrote California Attorney General George Deukmejian advising him of these allegations and notifying him that agents of the Federal Bureau of Investigation would be at Folsom State Prison to look into these allegations. On December 28, 1979, California Assistant Attorney General Arnold O. Overoye responded to Mr. Huerta offering cooperation with the investigation.

Our review of the results of this initial investigation lead us to conclude that further investigation is necessary to resolve this matter. Therefore, pursuant to Section 4(a)(2) of the Civil Rights of Institutionalized Persons Act, P.L. 96-247, 42 U.S.C. Section 1997b, a copy of which is enclosed for your reference, I am hereby notifying you that we are commencing an investigation into conditions of confinement at Folsom State Prison relating to whether prisoners are being adequately protected from harm while in the custody of the State of California. We are also continuing our investigation into allegations of racial discrimination against black prisoners at Folsom.

During our earlier investigation, California Deputy Attorney General William G. PrahI provided the FBI with compilations of documents rather than allowing the FBI to conduct interviews with prison officials. Apparently Mr. PrahI felt this was necessary because part of the investigation involved facts

173-11636-9

ENCLOSURE

which were also under litigation in Pinell v. Hickey, No. S-79-641 (E.D. Cal.). While this was a satisfactory arrangement for the purposes of our first investigation, we are again asking the FBI to interview prison officials as well as inmates. This new inquiry does not specifically relate to the facts surrounding the above cited litigation and we therefore believe there should be no bar to the interviews.

As required by 42 U.S.C. Section 1997b, I am sending copies of this letter to Mr. Paul Morris, Warden of Folsom Prison, and to Mr. George Deukmejian, Attorney General of California, as well as to Ms. Ruth Rushen, Director of the California Department of Corrections.

I will write to you again when we complete our review of the results of this investigation.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

cc: Hon. George Deukmejian
Ms. Ruth Rushen
Mr. Paul Morris

file

December 9, 1980

Draw S. Days III
Assistant Attorney General
Civil Rights Division
U. S. Department of Justice
Washington, D. C. 20530

Dear Mr. Days:

On December 13, 1979, Deputy Assistant Attorney General John E. Huerta notified this office that an investigation was being initiated concerning allegations "that certain disciplinary acts and practices involving inmates of Building 4-A at Folsom State Prison constitute a pattern and practice of racial discrimination." This investigation was being pursued under 42 U.S.C., §§ 2000(b) and 3766(c)(1). Mr. Huerta's letter also referred to allegations that prison personnel at Folsom had committed violations of the criminal Civil Rights statute, 18 U.S.C., §§ 241 and 242, with respect to inmates of Building 4-A.

On December 28, 1979, Assistant Attorney General Arnold O. Overoye acknowledged receipt of Mr. Huerta's letter and offered to cooperate with the investigation but noted that the California Department of Corrections had jurisdiction and supervision of the state prison system.

The Department of Corrections voluntarily provided the Federal Bureau of Investigation with a substantial amount of material in connection with this phase of the investigation. In fact, each of the FBI's specific requests for information was answered.

Thus, on April 23, 1980, five file folders containing material divided into twelve sections consisting of one thousand, one hundred and thirteen pages, were turned over to agents of the FBI. Duplicating costs for this ~~thousands~~ ~~of~~ ~~information~~ ~~are~~ ~~more~~ than five hundred dollars and the staff time expended to prepare this material involved

December 9, 1980

Although inquiries were made regarding possible reimbursement for these costs, no claim was filed with either your agency or with the FBI.

Your letter of August 25, 1980, followed. In that letter various officials of the State of California were notified that your office was commencing an investigation under 42 U.S.C., § 1997. In your letter it is noted that:

"Late last year we received allegations that inmates at Folsom State Prison, Represa, California, were being subjected to racial discrimination and violations of the Federal criminal civil rights laws, 18 U.S.C. Section 241 and 242."

With respect to the scope of the investigation which was being commenced under section 1997, your letter of August 25, 1980, indicated that inquiries were going to be made:

... "into conditions of confinement at Folsom State Prison relating to whether prisoners are being adequately protected from harm while in the custody of the State of California. We are also continuing our investigation into allegations of racial discrimination against black prisoners at Folsom."

Thus, rather than being limited to the earlier allegations concerning only the operation of the 4-A Building at Folsom, the section 1997 investigation appears now to have been expanded to include the entire institution.

Until recently, our involvement in this matter was limited to the representation of correctional officials named as defendants in a pending case entitled Pinell v. Hickey (E.D. Cal.) No. S-79-641. With regard to your original investigation we provided assistance to the Department of Corrections and the defendants named in the Pinell action only to the extent that these matters related to each other.

Our office has recently received a request from the California Department of Corrections that we represent the agency and its personnel in the section 1997 investigation and we have agreed to the extent we are authorized to provide the requested representation both to the Department of Corrections and to any correctional officials who become involved in that investigation.

December 9, 1980

Your letter of August 25, 1980, indicates that in your opinion the section 1997 investigation does not "specifically relate to the facts surrounding" the Pinell case, and that this case "should be no bar" to the requests for interviews which will be part of the current investigation. A careful review of the questions involved in the section 1997 inquiry leads me to disagree with your statement that the present investigation does not relate to the Pinell case. A number of the questions involved in your present investigation focus either directly or indirectly upon the facts at issue in Pinell.

While I do not anticipate that the Pinell litigation will have an adverse impact upon the willingness of the Department of Corrections or its personnel to cooperate with your section 1997 investigation, the two matters do appear to be closely related and will obviously impact each other.

In connection with the current phase of your investigation, an agent of the Federal Bureau of Investigations has requested that the Department of Corrections provide information by way of answers to written interrogatories to that agency in connection with the section 1997 investigation as well as requesting interviews with certain correctional officials. We have communicated the FBI's request to the Department of Corrections. The Department has expressed a willingness to cooperate with the FBI in the investigation. For example, the FBI has already asked to interview inmates at Folsom and has been allowed to select the inmates whom it wished to interview and has conducted confidential interviews with these inmates.

However, before the remainder of the FBI's request can be completed, our clients have requested that we seek clarification of several aspects of the current investigation.

First, your letter of August 25, 1980, as well as Mr. Huerta's earlier letter, each make reference to possible federal criminal civil rights violations.

While our office does not represent the defendants named in the Pinell action or the departmental officials involved in the section 1997 action with regard to possible criminal charges, your repeated reference to criminal sanctions will undoubtedly affect the willingness of the individuals to cooperate in the investigation.

December 9, 1980

In our opinion the records which already have been provided by the Department of Corrections in response to your earlier investigation would enable you to resolve any questions you may have had regarding the filing of criminal charges. Analysis of the material certainly leads us to the conclusion that the filing of criminal charges against any Correctional employees would be unwarranted.

We are also concerned that the production of evidence on the behalf of Correctional officials in the civil portion of the investigation could possibly be interpreted as a waiver of these person's Fifth Amendment rights. Since we do not represent any correctional personnel with respect to possible criminal charges, we are in no position to make such a waiver and would expressly condition the release of any material upon the retention of the individual's Fifth Amendment privileges.

Assuming then that a determination has been made that there is no evidence to warrant the filing of criminal charges, your continued reference to the possibility of bringing criminal charges contributes very little to an atmosphere of cooperation. In order to facilitate further cooperation in this matter, we would request some definition as to the current position of the criminal aspects of the investigations.

Second, several of the questions asked in connection with the current phase of your investigation concern confidential security matters such as "fields of fire" for weapons used at the prison and other firearms related information. The FBI has indicated that it can assure the confidentiality of such information while it is in the FBI's possession but that once the material leaves the FBI there are no assurances that the confidentiality of sensitive material will be protected. Before our clients can safely release material affecting institutional security, they must have your written assurances that the confidentiality of this material will be protected throughout the investigation and that it will not be released to parties outside your agency.

Third, it has already been noted that the materials and compilations which were provided in connection with your original investigation involved substantial administrative and duplicating costs. These materials were provided at no charge in a good faith effort to comply with your original requests. The FBI has informed me that the Department of Corrections will have to file a claim against the Federal Government or make arrangements with your

December 9, 1980

office to obtain reimbursement for the costs they will incur in complying with your most recent requests. Our clients have requested that you clarify your agency's policy with regard to the appropriateness of such payments as well as providing a workable method for insuring such payments.

Fourth, section 1997(4)(A)(1)(a)(b) and (d) clearly envision some sharing of information between the federal and state governments. In order to respond to your requests for information and in order to provide additional information which may be useful to your investigation, our clients have asked that there be some mutuality in the exchange of information. We would therefore request that you provide us with the material which supports the allegations referred to in your letter of August 25, 1980, and Mr. Huerta's earlier letter.

Finally, there appears to be a misunderstanding over the terms under which defendants responded to the FBI's earlier request for information.

Your August 25, 1980, letter indicates that the FBI was provided with compilations of documents rather than being allowed to conduct interviews with the defendants. This statement is not entirely accurate. Thus, when the defendants were contacted by the FBI in connection with the original investigation, the agent making the request was referred to our office. The agent provided me with a list of interrogatories which could be answered in writing. The agent did not request an interview with any prison officials and the FBI indicated it was satisfied with the manner used to provide the requested information.

Resolution of the above mentioned items will facilitate completion of your investigation which is our mutual goal.

Sincerely,

George Deukmejian
Attorney General

William George Prah
Deputy Attorney General

WGP:rj

bcc: Joseph Cavanagh
Legal Counsel
Department of Corrections
630 K Street
P. O. Box 714
Sacramento, CA 95814